

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HOLLAND HARDAWAY,

Petitioner,

v.

CASE NO. 01-70230

HONORABLE GEORGE CARAM STEEH

KENNY ROBINSON,

Respondent.

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**ORDER DENYING PETITIONER'S MOTION  
FOR IMMEDIATE RELEASE FROM CUSTODY**

On June 23, 2011, the Court conditionally granted the writ of habeas corpus on the ground that petitioner's first appellate attorney was ineffective. The Court ordered the State to release petitioner unless it granted him an appeal of right within sixty days of the Court's order. Currently pending before the Court is petitioner's motion for immediate release from custody. The motion alleges that the State has not complied with the terms of the Court's order and that petitioner's appeal of right has not been held within sixty days.

Respondent points out in an answer to petitioner's motion that the trial court filed a timely claim of appeal in petitioner's behalf and also appointed appellate counsel for him. Petitioner replies that he was not asking to have his appeal of right completed within sixty days. He claims instead that he meant to seek an unconditional writ of habeas corpus on the ground that his appellate attorney has not responded to his letters and did not file a timely appellate brief.

The record before the Court indicates that the State has complied with the

Court's order granting petitioner a conditional writ of habeas corpus. This Court issued its order granting the writ on June 23, 2011, and on July 15, 2011, the Wayne County Circuit Court filed a claim of appeal for petitioner and appointed counsel for him. See Certificate of Compliance, dkt. #75, ex. B. The assigned attorney declined to take the case, but substitute counsel was appointed to represent petitioner on July 21, 2011. See *id.*, ex. C. Although the appellate brief was due in mid-September, counsel for petitioner has requested an extension of time to file the brief. See *People v. Hardaway*, No. 304814 (Mich. Ct. App. Oct. 25, 2011).

The State has taken steps to provide petitioner with an appeal of right, and the fact that petitioner is dissatisfied with his current attorney is not an issue that this Court is required to address. "Intrusion into state proceedings already underway is warranted only in extraordinary circumstances." *Atkins v. Michigan*, 644 F.2d 543, 546 (6th Cir. 1981).

Petitioner claims that the appellate process has languished for years and that the state courts have deprived him of an opportunity to pursue a meaningful direct appeal. The state court's docket, however, indicates that petitioner's appeal is progressing and that the Michigan Court of Appeals is monitoring his case. There are no extraordinary circumstances requiring federal court intervention. Accordingly, petitioner's motion for immediate release [dkt. #76, dated Sept. 29, 2011] is **DENIED**.

Dated: November 7, 2011

S/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on November 7, 2011, by electronic and/or ordinary mail and also to Holland Hardaway at Mound Correctional Facility, 17601 Mound Road, Detroit, MI 48212.

S/Josephine Chaffee  
Deputy Clerk